

MEMORANDUM


DEPARTMENT OF ENVIRONMENTAL QUALITY DIVISION OF WATER QUALITY PROGRAMS

P.O. Box 10009

Richmond, VA 23240-0009

SUBJECT: Guidance Memo No. 04-2022
Procedures for Establishing Boating No Discharge Zones

TO: Regional Directors

FROM: Ellen Gilinsky, Ph.D., Director 

DATE: November 29, 2004

COPIES: Rick Weeks, Jon Van Soestbergen and Cindy Berndt

Summary:

The purpose of this guidance is to provide a procedure for handling public or internal requests for the establishment of boating No Discharge Zones, and for establishing the No Discharge Zones in accordance with federal regulation 40 CFR Part 140 (2004) and state regulation 9 VAC 25-71 (2004).

Electronic Copy:

An electronic copy of this guidance in PDF format is available for staff internally on DEQNET and for the general public on DEQ's website at: <http://www.deq.virginia.gov/water/>.

Contact information:

Please contact Mike Gregory, Office of Water Permit Support, (804) 698-4065 or mbgregory@deq.virginia.gov if you have any questions about this guidance.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any particular method for the analysis of data, establishment of a wasteload allocation, or establishment of a permit limit. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

PROCEDURE FOR DEQ REVIEW OF SECTION 312 NO DISCHARGE ZONE DESIGNATION REQUESTS

Background

Section 312 of the Clean Water Act and EPA regulations at 40 CFR Part 140 address sewage discharges from boats. The federal regulations control these discharges by requiring boats with installed toilets to have treatment units called Marine Sanitation Devices or "MSDs". Type I and Type II MSDs consist of two levels of treat and discharge units, while Type III MSDs are holding tanks that do not discharge and must be pumped out at pump out facilities. Pump out facilities are usually located at marinas and are regulated by the Virginia Department of Health. Most recreational boats with installed toilets have the holding tanks. Discharging raw sewage from boats, from holding tanks or portable toilets for example, is not directly addressed by federal regulations, but state law prohibits it and this is now clarified in our state regulation 9 VAC 25-71.

Federal law prohibits a state from adopting regulations regarding MSDs that are more stringent than federal regulations, but it allows a state to petition EPA for designation of No Discharge Zones (NDZs), where all sewage discharges, treated or untreated, are banned. The process is for the state to demonstrate that the particular water body requires special protection and that there are adequate pump out facilities in the area, since boat sewage wastes in NDZs would have to be held until pumped out. EPA does not have a specific application but has developed informational documents and a loosely structured process for applying for NDZ designation. Any citizen can initiate the process but the final request must be signed by the governor or chief environmental officer of the state.

Note that since untreated sewage discharges from boats are illegal, the only difference in a NDZ with respect to the law is that boats with treat and discharge units (MSD Type I or II) cannot use them. Since most boats on the water have holding tanks anyway, this is not a significant difference. It might be considered, however, that the public outreach and increased law enforcement efforts in NDZs provide for more protection of the waters with regard to previously undetected illegal discharges. Another consideration is that in areas where there is a considerable amount of commercial boat traffic there are more likely to be boats operating with treat and discharge type units (e.g., tug boats in the Chesapeake Bay).

As of the date of this guidance Smith Mountain Lake is the only designated NDZ in the state. This resulted from a bill that was passed by the General Assembly directing the State Water Control Board to petition EPA for NDZ designation. The designation was received and a new boating regulation, 9 VAC 25-71, was adopted that provides for NDZ identification and enforcement. Since the Smith Mountain Lake NDZ designation inquiries have been received from various groups in the Chesapeake Bay watershed wishing to pursue NDZ designation for other water bodies of concern. In order to handle these requests consistently and in accordance with State Water Control Law at Section 62.1-44.33 the following procedure should be followed.

Procedure

The procedure for designating Section 312 Boating No Discharge Zones will be as follows.

1. When an interested party, local government or state agency proposes No Discharge Zone (NDZ)

designation for a waterbody within the state it should submit a proposal including the following information to the Director of the DEQ Division of Water Quality Programs. The Division of Water Quality Programs will develop this information for DEQ initiated proposals:

- A. Name and contact information for the person or group making the request.
- B. Name and location of the waterbody.
- C. Exact boundaries of the area to be designated, using latitude and longitude of boundaries, any bordering landmarks or delineating features (e.g., bridges or mean low water elevations) or other means of identifying the area.
- D. A map of the area to be designated.
- E. Reason why designation is being sought, i.e., why the water body requires greater environmental protection, including:
 - (1) Nature of the waterbody (estuary, river, lake, etc.) and a description of its features (e.g., heavily populated area, major port or boating area, pristine bay with little surrounding development, enclosed embayment, deep mountain lake);
 - (2) any unique features or qualities (including high quality waters) or environmental importance (e.g. shellfish waters) that necessitate stronger resource protection;
 - (3) information on contact recreational use (e.g., swimming);
 - (4) any specific water quality problems existing, including 303(d) listing and TMDL status if applicable.

Note that greater environmental protection might be considered necessary to maintain the status of a high quality resource or to improve the status of a low quality one.

- F. Indication if the waterbody is:
 - (1) in an established sanctuary, national or state park, wilderness area, recreation area or if the waterbody is used by endangered or threatened species;
 - (2) a public water supply.
- G. A statement or rough estimate of the availability of boat sewage holding tank pump-outs in the area (more exact information will be developed for the EPA application).
- H. A statement or rough estimate of the amount of boat traffic in the waterbody and the type of boat traffic, recreational or commercial (more exact information will be developed for the EPA application).
- I. Indication, if available, of any public support or interest for or against the NDZ designation.
- J. Information on any local enforcement capability (e.g., police boats).
- K. Information on any local public outreach capability (provision of signs, pamphlets or other public awareness efforts).

- 2. DEQ will review the proposal and obtain more information if necessary.
- 3. If DEQ decides it is not appropriate to proceed, it will indicate why and what options are available to the individual or group if they wish to continue (e.g., approach the State Water Control Board or petition EPA directly).
- 4. If DEQ decides to proceed with the proposal it will set up a public meeting and provide public notice by publication in a paper local to the waterbody and by such other means as deemed necessary, notifying the public of the intent to designate the waters and what that means, and

providing public meeting information. A 30-day public notice period will follow.

5. After the public meeting and upon completion of the public notice period a review of public comments will be summarized and DEQ staff will present the proposal for NDZ and the summary of public comments to the State Water Control Board with a recommendation on pursuing the NDZ designation from EPA. Disapproval would mean that the individual or group wishing the designation would have to pursue it directly from EPA, obtaining the governor's signature without DEQ endorsement.
6. If the State Water Control Board approves pursuing the designation, DEQ will assist the individual or group in preparing an application to EPA and will coordinate with the Virginia Department of Health, the Department of Game and Inland Fisheries and the Virginia Marine Resources Commission (62.1-44.33 requires consultation with these agencies in formulating boating regulations) as well as with EPA Region III.
7. Once the application is prepared and the draft reviewed by EPA (EPA will indicate if it is sufficient for approval prior to formal submittal), DEQ will route the application through to the Executive Office for signature by the Secretary of Natural Resources and transmittal to EPA.
8. EPA will publish the proposal in the federal register.
9. Upon final publication in the federal register, the new NDZ will be established at the federal level.
10. DEQ will amend 9 VAC 25-71 by adding the new NDZ to the list of state designated NDZs, and will present it to the State Water Control Board as final exempt (required to conform to federal law).
11. Publication of the 9 VAC 25-71 amendment will be made in the Virginia Register and the final 30-day notice period will follow, after which the new NDZ is established at the state level.
12. Public awareness and enforcement efforts can begin.